IN THE INCOME TAX APPELLATE TRIBUNAL
"K" BENCH, MUMBAI

BEFORE SHRI G. S. PANNU, PRESIDENT &
SHRI AMIT SHUKLA, JM

आयकरअपीलसं./ I.T.A. No. 1795/Mum/2017
(निर्धारणवर्ष/Assessment Year: 2012-13)

Atos India Pvt. Ltd., Godrej & Boyce Complex, Plant 5, Pirojshanagar, LBS Marg, Vikhroli (West), Mumbai-400079	**बनाम**/ Vs.	**DCIT-14(1)1),** Aayakar Bhavan Mumbai
स्थायीलेखासं./जीआइआरसं./PAN No. AAACO2461J		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी/**Respondent**)

अपीलार्थीकीओरसे/ **Appellant by**	:	Shri Dhanesh Bafna /Chandni Sha /Riddhi Maru /Kinjal Patel, Ld. ARs
प्रत्यर्थीकीओरसे/**Respondent by**	:	Dr. Yogesh Kamat, Ld. DR
सुनवाईकीतारीख/ **Date of Hearing**	:	01.06.2022 & 25.01.2023
घोषणाकीतारीख / **Date of Pronouncement**	:	23.02.2023

आदेश/O R D E R

Per AMIT SHUKLA, Judicial Member:

1. The aforesaid appeal has been filed by the assessee against the final assessment order passed u/s 143(3) r.w.s. 144C(13) in

pursuance of direction given by the Ld. Dispute Resolution Panel (DRP)-1 vide order dated 28.12.2016 for the AY 2012-13.

2. The assessee has challenged Transfer Pricing (TP) adjustment in relation to provision of software development services and intra group services. Beside this, assessee has also raised various corporate grounds, which are as under:-

Sr. No.	Particulars	Amount in Rs.
1	Ground No. 3- Grant of lesser deduction under section 10AA of the Income tax Act, 1961 ('the Act')	48,53,467/-
2	Ground No. 4- Denial of claim of depreciation on goodwill	2,92,19,122/-
3	Ground No. 5- Disallowance under section 4o(a) of the Act 'on account of non-deduction of TDS on software purchase	16,65,932/-
4	Ground No. 6- Disallowance under section 40(3) of the Act on account of non-deduction of TDS on foreign parties: a) Communication Charges-24,28,156/- b) Subscription Fees-29,O3,666/- c) Training Fees-3,28,829/- d) Consultancy Fees- 7,85,256/-	64,45,907/-
5	Ground No. 7- Delay in payment of employee's ESIC and PF contribution	1,74,35,513/-
6	Ground. No. 8 – Non granting of credit of self assessment	9,11,44,000/-

7	Ground No. 8 – Short credit of tax deducted at source	5,61,53,656/-

3. The summary of additions challenged in this appeal are as under:-

Sr. No.	Particulars	Amount in Rs.
	Transfer pricing adjustments	
1.	Rendering of software development services	68,37,05,578
2.	Intra-group services	10,51,45,309
	Sub- total (A)	78,88,50,887
	Corporate tax additions	
3.	Grant of lesser deduction under section 10AA of the Act in respect of remaining units	48,53,467
4.	Denial of claim of depreciation on goodwill	2,92,19,122
5.	Disallowance for provision for project risk	17,16,22,641
6.	Disallowance under section 40(a) on account of non-deduction of TDS on software purchase	16,65,932
7.	Disallowance under section 40(a) due to non-deduction of TDS of Foreign Parties	64,45,907

8.	Denial of claim of deduction in employee's ESIC contribution & Labour welfare fund	1,74,35,513
	Sub-total (B)	23,12,42,582
Total (A+B)		**102,00,93,469**

4. Apart from above, assessee has also raised the following additional grounds, which are as under:-

Additional Ground No. 1: *On the facts and in the circumstances of the case and in law, the order dated 31 January 2016 passed by the Joint Commissioner of Income-tax (Transfer Pricing) - 1(1) ('Transfer Pricing Officer') under section 92CA of the Income-tax Act, 1961 ('the Act') is beyond the time limit prescribed under section 92CA (3A) r.w.s 153 of the Act thus making the transfer pricing order illegal, bad in law, null and void and liable to be quashed.*

Additional Ground No. 2: *On the facts and in the circumstances of the case and in law, the transfer pricing order being illegal and void on account of being barred by limitation in terms of section 92CA(3A) r.w.s 153 of the Act, the action of the Assessing Officer in passing the draft assessment order dated 29 March 2016 by invoking section 144C of the Act is without jurisdiction and hence, the final assessment order dated 31 January 2017 and all proceedings consequent to the draft assessment order are also illegal and bad in law and liable to be quashed.*

Additional Ground No. 3: *On the facts and in the circumstances of the case and in law, the transfer pricing order being illegal and void on account of being barred by limitation in terms of section 92CA (3A) r.w.s 153 of the Act, consequently, the final assessment order dated 31 January 2017 is also barred by limitation as prescribed under section 153 of the Act, thus making the final assessment order illegal, bad in law, null and void and liable to be quashed.*

Additional Ground No. 4: *On the facts and in the circumstances of the case and in law, the Appellant prays that the amount of Education Cess and Higher and Secondary Education Cess charged on income tax during the year under consideration should be allowed as deductible business expenditure while computing the total taxable income.*

5. Additional Ground No. 4 has not been pressed; therefore, it is dismissed as not pressed.

6. In sum and substance vide Additional Ground Nos. 1 to 3, assessee has challenged;

i) The period of limitation for passing the transfer pricing order by the TPO.

ii) In absence of the TPO order, the entire proceeding initiating by the AO u/s 144C is bad in law.

iii) In absence of valid TPO order, the AO is required to complete the assessment within the due date as prescribed u/s 153 of the Act and since no final assessment has been passed within the time limit, the assessment order is barred by limitation.

7. Since the additional grounds goes to the very root of the issues involved challenging the limitation and jurisdiction of passing the order of TPO as well as assessment order and are borne out from the records, therefore the same are being admitted for adjudication.

8. The facts in brief qua the limited purpose of adjudication of legal issues raised in aforesaid additional grounds are that, assessee is a wholly owned subsidiary of Atos BV, Netherlands, which in turn is wholly owned by Atos S.A., France. The assessee is an Information Technology ('IT) service company engaged in the business of development and maintenance of computer software, development and sale and export of software services and provision of technical consultancy. As in

the TP study report, assessee had disclosed the following international transactions with its AE:-

Sr. No	*Nature of transaction*	*AY 2012-13 (Amounts in Rs)*			*Method*
		Atos India	*(9 months)*		
1	*Provision of software development (IT services*	*576,69,58,597*	*162,83,26,008*	*739,52,84,606*	*TNMM*
2	*Payment of trademark*	*19,08,852*	*10,88,389*	*29,97,241*	*CUP*
3	*Receipt of services*	*45,58,96,605*	*33,02,68,094*	*78,61,64,699*	*TNMM*
4	*Reimbursement of expenses*	*2,10,44,588*	*-*	*-*	
5	*Recovery of expenses*	*-*	*1,40,74,418*	*-*	*CUP*
	Total	*669,50,25,196*	*213,53,21,071*	*879,52,27,221*	

9. Accordingly, AO made a reference u/s 92CA(1) for determination of arm's length price (ALP) in relation to the international transaction detail in Form No. 3CEB for AY 2012-13 vide letter dated 13.08.2014. Ld. TPO vide his order dated 31.01.2016 proposed the following adjustments:-

Sr. No	*Description of the transactions*	*Amount of adjustment (In Rs.)*
1	*Rendering of software development services*	*68,37,05,578*

3	*Intragroup services - non-AE segment*	*10,51,45,309*
	Total adjustment	*78,88,50,887*

10. After the direction of DRP vide order dated 28.12.2016, AO in his final assessment order dated 31.01.2017 computed the transfer pricing adjustment at Rs. 63,87,42,448/-. Thereafter the computation was made after various additions /disallowances in the final assessment order in following manner:-

I	***Income From Business***		***215,99,87,708***
	As per return of income	*159,29,90,973*	
Add	*Transfer Pricing Adjustment*	*63,87,42,448*	
	Disallowance of depreciation of Goodwill	*2,92,19,122*	
	Disallowance u/s 40(a)(ia)	*16,65,932*	
	Disallowance due to non deduction of TDS of foreign Parties	*64,45,907*	
	Delayed payment of ES1C & PF	*1,74,35,513*	
		228,64,99,895	
Less	***Deduction***		
	Deduction u/s 10A A	*12,65,12,187*	
	Total Income		***215,99,87,708***

	Rounded off u/s 288A		***215,99,87,710***

11. Before us ld. Counsel for the assessee, Mr. Dhanesh Bafana submitted that the order of TPO is time barred in terms of section 92CA(3) of the Act and consequently, the passing of draft assessment order and the entire proceeding initiated u/s 144C is bad in law, because in absence of valid TPO order, the AO is required to complete the assessment within the due date as prescribed u/s 153 of the Act and since no final assessment has been passed within the time limit, therefore, the assessment order is barred by limitation.

12. Following chronology of events are relevant for the purpose of adjudication of the aforesaid additional grounds:-

Sr. No.	**Particulars**	**Relevant Dates**
A	Assessment Year	2012-13
B	Period of limitation for making an order of assessment as per Section 153 of the Act	24 months from the end of Assessment Year i.e.

		31/03/2015
C	Extension of period of limitation in case reference is made under section 92CA of the Act	12 months 31/03/2016
D	Proceeding for assessment should be completed on / before this date	31.3.2016
E	A date prior to the date on which period of limitation expires	30.3.2016
F	Sixty day period expires on	31.1.2016
G	Transfer Pricing Officer's order to be passed any time on / before this date	30.1.2016
H	Date on which Transfer Pricing Officer's order is passed	31.01.2016
I	Draft Assessment order passed on	29.03.2016
J	DRP Directions passed on	28.12.2016
K	Final Assessment order passed on	31.01.2017

13. After referring to the aforesaid chronology of events, Ld. Counsel for the assessee submitted that, **Sub section (3A) of Section 92CA clearly provides that the TPO order should be passed before 60 days prior to the date prescribed u/s 153 of the Act**, which here in this case is 31st March 2016. Consequently, in terms of section 92CA of sub section (3A) r.w.s. 153(1), 60 days prior to 31st March will be counted from

31st March 2016, i.e., it should be passed on or before 30th January 2016. The 60 days have to be counted from 30th March 2016, because the provision envisages 60 days prior to the date on which period of limitation expires that is date before the day of 31st March 2016. Accordingly, there was 30 days in March; 29 days in February (as it was leap year); and 1 day in January.

14. He further submitted that the Hon'ble Madras High Court in the case of **M/s. Pfizer Healthcare India Private Limited vs. JCIT/ Dy. CIT (Writ Petition No.32699 of 2019)** **[2021] 124 taxmann.com 536 (Madras)/[2021] 433 ITR 28 (Madras)** has allowed the writ petition filed and has accepted the Assessee's contention that the order of the TPO passed during the 60 days period prior to the due date of completion of assessment is barred by limitation under section 92CA(3A) r.w.s. 153(1) of the Act and therefore the said order is to be quashed. The relevant extracts of the decision are reproduced below:-

"29. The provisions of Section 144C prescribe mandatory time limits both pre and post the stage of passing of a transfer pricing order.

Assessments involving transfer pricing issues are different and distinct from regular assessments and the intention of Legislature is to fast track such assessments. Bearing in mind the specialized nature of such assessments, a separate set of Officers attend to the framing of assessments and the DRP has been constituted for redressal of disputes involving TP issues, in a timely fashion. In this scheme of things, I am unable to accept the submission that the period of 60 days stipulated for passing of an order of transfer pricing, is only directory or a rough and ready guideline. This argument is rejected.

30. Now, coming to the question of how the 60 day period is to be computed, the critical question would be whether the period of 60 days would be computed including the 31st of December or excluding it. Section 153 states that no order of assessment shall be made at any time after the expiry of 21 months from the end of the assessment year in which the income was first assessable. The submission of the revenue is to the effect that limitation expires only on 12 am of 01.01.2020. However, this would mean that an order of assessment can be passed at 12 a m on 01.01.2020, whereas, in my view, such an order would be held to be barred by limitation as proceedings for assessment should be completed before 11.59.59 of 31.12.2019. The period of 21 months therefore, expires on 31.12.2019 that must stand excluded since Section 92CA(3A) states 'before 60 days prior to the date on which the period of limitation referred to Section 153 expires'. Excluding

31.12.2019, the period of 60 days would expire on 01.11.2019 and the transfer pricing orders thus ought to have been passed on 31.10.2019 or any date prior thereto. Incidentally, the Board, in the Central Action Plan also indicates the date by which the Transfer Pricing orders are to be passed as 31.10.2019. The impugned orders are thus, held to be barred by limitation."

15. Thus, the entire TPO order is barred by limitation, which deserves to be quashed.

16. He further submitted that in absence of TPO order, i.e., if it is barred by limitation, then the entire proceedings initiated by the AO u/s 144C also becomes bad in law, because the assessee would no longer qualify as an **'eligible assessee'** as defined u/s 144C of the Act. Accordingly, passing a draft assessment order by invocation of provisions of section 144C of the Act will not be mandated under the Act.

17. His next line of argument is that, in absence of valid TPO order, AO was required to complete the assessment within the due date u/s 153, i.e. He should pass the final assessment order by 31st March 2016 and instead, he has passed the draft

assessment order on 29th March 2016 and the final assessment order on 31st March 2017, which is beyond the period of limitation.

18. On the other hand, Ld. DR submitted that AO has made reference to the TPO u/s 92CA(1) for determination of arm's length price on the international transactions entered by the assessee with its AE's. The TPO proposed adjustment vide his order dated 31st January 2016 and therefore, in accordance with provision of section 144C(1), the AO was required to pass the draft assessment order, which he has done. He further submitted that the time limit prescribed in section 92CA(3A) is that AO should have passed order 60 days from the period of limitation as per section 153 and the phrase **"*may be made in time before 60 days prior to the date on which period of limitation referred to section 153.....*"** The word **'may be'** means that the time limit for passing of the order by the TPO u/s 92CA(3) should be adhered in consonance with overall time limit provided in section 153 and AO should have 60 days for passing the draft assessment order or the final assessment

order as the case may be. The limitation provided in section 153 has to be taken into consideration while interpreting the word ***'may be'*** as provided in sub section 3A of section 92CA. Here in this case, AO had 60 days for passing of the order after the TPO has passed the order from 31st January 2016.

19. Regarding the judgment of Hon'ble Madras High Court in the case of **M/s. Pfizer Healthcare India Private Limited (supra)**, he submitted that though this issue has been decided in favor of the assessee that the 60 days have to be counted from one day prior to the date on which the period of limitation referred to section 153 expire, i.e., 60 days have to be calculated from 30th March and not from 31st March. However, overall provision of section 92CA (3A) r.w.s. 153 has to be given a harmonious construction and the word 'may be' has to be interpreted as '***so far as may be'***, because in terms of section 92CA (4), AO has no option but to adopt the adjustment made by the TPO and there is no application of mind by the AO once the TPO has given his order. The reference to the TPO and determination of arm's length price is part of the overall process of assessment

and determination of income for which the time limit has been prescribed for 3 years in section 153. Assessment thus has to be completed in the time limit of 3 years. The purpose of legislature was to give time to the AO for completion of assessment which is 60 days and it would be too strict interpretation the way, the Hon'ble High Court has held that **'may be'** has to be read as '**shall'**. Thus, he submitted that AO clearly had 60 days for passing of the assessment order after the TPO had passed order on 31st January 2016.

20. In so far as the other contention of the assessee is that, once the TPO's order is barred by limitation, then the assessee is no longer 'eligible assessee'. Ld. DR submitted that when the reference was made to the TPO in section 92CA and TPO had proposed adjustment, then assessee was clearly an 'eligible assessee' and therefore, AO was justified in passing a draft assessment order u/s 144C(1). He further submitted that even for the technical reason delay of one day in passing the TPO order is declared as time barred, then it does not mean that assessee does not qualify as 'eligible assessee' and in TPO's

order there was a clear cut variation as consequence of the order of TPO. Here in this case, TPO had proposed TP adjustment of more than Rs. 78.88 crores and therefore, assessee was clearly 'eligible assessee' u/s 144C(1) r.w.s. Clause (b) of Sub-section (15) of section 144C. At the most, only the TP addition may not be considered but other corporate addition will be sustained and same has to be decided on merits.

21. Ld. Counsel for the assessee by way of rejoinder submitted that once there is no TP adjustment, there is no question of assessee being treated as 'eligible assessee' and consequently the AO was required to pass final assessment order and not the draft assessment order, accordingly the whole assessment order passed by AO is bad in law and is barred by period of limitation. Therefore, the entire corporate grounds also cannot be sustained. In support, he relied on the judgment of ITAT, Mumbai Bench in the case of **Fedex Express Transportation and Supply Chain Services (India) Pvt. Ltd. vs. DCIT (2019)**

108 taxman.com 542 (Mum-Trib) and drew our attention para 19 of the said order which reads as under:-

"19. Before we proceed further, it would be appropriate to briefly touch upon the scheme of reference to Dispute Resolution Panel contained in Sec. 144C of the Act. Prior to the introduction of Sec. 144C of the Act by the Finance (no.2) Act, 2009 with retrospective effect from 01.04.2009, if assessee was aggrieved by any of the additions/disallowances made by the Assessing Officer, an appeal would lie to the Commissioner (Appeals) under Section 246A of the Act. However, a new scheme of dispute resolution was brought into the Act by insertion of Sec. 144C of the Act in the context of 'eligible assessee' prescribed therein. Sec. 144C of the Act contains 15 subsections and provides for a mechanism for dispute resolution, powers of Dispute Resolution Panel, definition of Dispute Resolution Panel, eligible assessee, etc. In terms of the schematic arrangement prescribed in Sec. 144C of the Act, firstly a 'draft proposed order of assessment' would be passed in the case of an 'eligible assessee'; thereafter such 'eligible assessee' is permitted within 30 days of receipt of the order, either to file objections before the DRP or accept such draft assessment order and communicate the same to the Assessing Officer. If the assessee opts for filing objections before the DRP, the DRP hears such assessee and gives directions to the Assessing Officer for completion of assessment. Thereafter, the

Assessing Officer passes a 'final assessment order' within the period prescribed. If the assessee chooses to accept such draft assessment order or fails to communicate the Assessing Officer within one month, the Assessing Officer shall pass the final assessment order within the period prescribed therein. As a perusal of Sec. 144C(1) of the Act shows, the Assessing Officer is required to forward the draft of the proposed order of assessment only to an 'eligible assessee', and not to every assessee under the Act. The meaning of the expression 'eligible assessee' can be found in clause (b) to sub-section 15 of Sec. 144C of the Act, which reads as under :-

"(15) For the purposes of this section, -

(a) .....

(b) "eligible assessee" means, -

(i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and

(ii) any foreign company."

Ostensibly, the expression 'eligible assessee' has a restrictive meaning as it covers only two types of persons. Firstly, any person in whose name the TPO has proposed variation in the order passed under Section 92CA(3); and, secondly, any foreign company. In the instant case, FEIPL, the entity in

whose name the draft assessment order has been passed, was not a foreign company and, therefore, it can be understood to be an 'eligible assessee' only if it falls within Sec. 144C(15)(b)(i) of the Act. Notably, sub-clause (i) of clause (b) of sub-section 15 of Sec. 144C of the Act refers to a 'person' in whose case variation is proposed by the order of TPO. The word 'person' has been defined in Sec. 2(31) of the Act to mean, inter-alia, a 'company', which in turn has been defined in Sec. 2(17) of the Act. Broadly speaking, a 'company' is understood to mean an 'Indian company or any institution, association or body corporate registered/incorporated/declared'. It is also notable that the expression 'Indian company' has also been defined in Sec. 2(26) of the Act to mean 'a company which is formed and registered under the Companies Act, 1956'. Therefore, on a conjoint reading of the above provisions, it is justifiably canvassed by the assessee before us that qua the instant case, the 'eligible assessee' under Section 144C of the Act has necessarily to be a 'person' which is an Indian company formed and registered under the Companies Act, 1956 in whose case the transfer pricing order has been passed proposing a variation. Notably, in the instant case, the erstwhile entity, FEIPL, was an Indian company, but it ceased to exist on 01.10.2013 pursuant to the scheme of amalgamation sanctioned by the Hon'ble Bombay High Court vide order dated 05.07.2013, i.e. before the date of passing of

the transfer pricing order by the TPO under Section 92CA(3) of the Act in the name of FEIPL. Thus, as on the date of passing of order by the TPO on 30.01.2015, FEIPL did not exist as an Indian company under the Companies Act, 1956 as understood by Sec. 2(26) of the Act and consequently, there does not exist any 'person' as contemplated under Section 2(31) of the Act. Thus, it is a case where the TPO proposed variation in the case of a non-existent entity, which is not even understood as a 'person' under the Act. This also brings out that FEIPL could not be understood as an 'eligible assessee' in the eyes of law under Section 144C(15)(b)(i) of the Act; and, in any case, on the date of passing of order by the TPO, the existing entity was FETSCS, but it is nobody's case that the TPO has passed any order in the name of FETSCS proposing any variation in the returned income. Therefore, in this background, it has to be inferred that in the absence of an 'eligible assessee' as understood for the purposes of Sec. 144C(15)(b)(i) of the Act, no draft of the proposed order of assessment could have been passed by the Assessing Officer under Section 144C(1) of the Act, much less in the name of FEIPL. Therefore, the draft assessment order passed in the present case in the name of erstwhile FEIPL is invalid in the eyes of law."

D E C I S I O N

22. We have heard the rival submissions on the aforesaid legal issue as raised in additional grounds and we have also perused the judgment of Hon'ble Madras High Court in the case of **M/s. Pfizer Healthcare India Private Limited (supra)**. Here in this case, the reference was made by the AO to the TPO u/s 92CA(1) in August 2014 and TPO had proposed transfer pricing adjustment of more than Rs. 78.88 crores on rendering of software development services and intra group services vide his order 31st January 2016. Thereafter draft assessment order was passed on 29.03.2016 wherein aforesaid TP adjustment was also made and further additions were made on corporate tax issues as enumerated above. After the receiving of draft assessment order, assessee filed objection before the DRP and DRP issued direction on 28.12.2016 and accordingly, final assessment order was passed on 31.01.2017.

23. Sub-section 3A of section 92CA provides a time limit for passing of the order by the TPO u/s 92CA (3) in the following manner:-

"(3A) Where a reference was made under sub-section (l) before the 1st day of June, 2007 but the order under sub-section (3) has not been made by the Transfer Pricing Officer before the said date, or a reference under sub-section (l) is made on or after the 1st day of June, 2007, ***an order under sub-section (3) may be made at any time before sixty days prior to the date on which the period of limitation referred to in section 153,*** *or as the case may be, in section 153B* ***for making the order of assessment*** *or reassessment or recomputation or fresh assessment,* ***as the case may be, expires:"***

24. Ergo, the TPO can pass an order u/s 92CA of the Act at any time before 60 days prior to the date on which period of limitation referred to u/s 153 expires. Thus 60 days have to be counted prior to the date of last date of limitation u/s 153.

25. Section 153 of the Act as applicable for the AY 2012-13 reads as under:-

'153. (i) ***No order of assessment shall be made under section 143 or section 144 at any time after the expiry of—***

(a) two years from the end of the assessment year *in which the income was first assessable; or*

(b) one year from the end of the financial year in which a return or a revised return relating to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, is filed under sub-section (4) or sub-section (5) of section 139, whichever is later..

Provided also that in case the assessment year in which the income was first assessable is the assessment year commencing on the 1st day of April, 2009 or any subsequent assessment year and during the course of the proceeding for the assessment of total income, a reference under sub-section (1) of section 92CA is made, the provisions of clause (a) shall, notwithstanding anything contained in the first proviso, have effect as if for the words "two years", the words "three years" had been substituted."

26. Thus, in case where a reference is made to the TPO u/s 92CA(1), the time limit for completion of assessment is 3 years. Here in this case, in terms of section 153, the time limit for completing the assessee for AY 2012-13 was 31st March 2016. If the time limit provided in section 192CA(3A) r.w.s. 153(1) of the Act is juxtaposed, then here in this case, time limit for passing of the TPO order would be on or before 30th January 2016, because, if one day prior to the date of limitation u/s 153 is

taken, then 60 days have to counted from 30th March 2016. The 60 days from 30th March would be (30 days of March + 29 days of February being a leap year + 1 day of January).

27. Now whether in these circumstances, the TPO order gets time barred or not, has come up for consideration before Hon'ble Madras High Court in the case of **M/s. Pfizer Healthcare India Private Limited (supra)** by the division bench wherein single bench Judge in Writ Appeal No. 1120 of 2001 and others, the Hon'ble Madras High Court after considering the relevant provision as well as arguments made by both the parties and various judgments had made the following observations:-

> *22. From Section 153, the regular time for passing the assessment order ends on 31.12.2018 and with extension on the matter being referred to TPO, the time limit to pass assessment order would lapse on 31.12.2019. What is not to be forgotten, while interpreting a taxing statute, is the explicit and clear language used by the parliament while enacting the law. If the language employed in any statute is clear and unambiguous from its plain and natural meaning, external aid for interpretation are unnecessary. In the present case, we are called upon to adjudicate the period of limitation applicable to*

TPO under Section 92CA(3A) and incidentally under Section 153.

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26. Further, the general interpretation by resorting to the meaning conveyed under the General Clauses Act cannot be adopted while interpreting 92CA (3A), because, the context and the language employed therein are completely different and it is pertinent to note that the words "from" and "to" have not been used. Even the employment of the General Clauses Act will not aid the Revenue, the reason of which will be disclosed a little later in this judgment. But, right now, it is relevant to consider the scope of the word "to".

27. The word "to" is used as a preposition or as an adverb. In popular sense, it is used to express the direction in which a person, thing, or time travels. The flow of direction is to be gauged from the preceding word or words used, like "prior to" or "upto". Keeping the same in mind, if we look at the wording of Section 92CA (3A), we cannot accept the contention of the Revenue that the time to be reckoned is from 31.12.2019 and not 30.12.2019 as has been rightly done by the learned Judge.

28. The word "date" in section 92CA(3A) would indicate 31.12.2019. But the preceding words "prior to" would indicate that for the purpose of calculating the 60 days, 31.12.2019 must be excluded. The usage of the word "prior" is not without

significance. It is not open to this court to just consider the word "to" by ignoring "prior". The word "prior" in the present context, not only denotes the flow of direction, but also actual date from which the period of 60 days is to be calculated. It is settled law that while interpreting a statute, it is not for the courts to treat any word(s) as redundant or superfluous and ignore the same. In this connection, it is pertinent to note the judgment of the Apex Court in Grasim Industries Ltd. v. Collector of Customs, [(2002) 4 SCC 297 : 2002 SCC OnLine SC 413], wherein, it was held as follows:

"10. No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or alternating (sic altering) the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so, what has

been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. As stated by the Privy Council in Crawford v. Spooner [(1846) 6 Moore PC 1 : 4 MIA 179] "we cannot aid the legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there". In case of an ordinary word there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding the particular case. This principle is too well settled and reference to a few decisions of this Court would suffice. (See : Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests [1990 Supp SCC 785 : AIR 1990 SC 1747] , Union of India v. Deoki Nandan Aggarwal [1992 Supp (1) SCC 323 : 1992 SCC (L&S) 248 : (1992) 19 ATC 219 : AIR 1992 SC 96] , Institute of Chartered Accountants of India v. Price Waterhouse[(1997) 6 SCC 312] and Harbhajan Singh v. Press Council of India [(2002) 3 SCC 722 : JT (2002) 3 SC 21] .)"

29. The language employed is simple. 31.12.2019 is the last date for the assessing officer to pass his order under Section 153. The TPO has to pass order before 60 days prior to the last date. The 60 days is to be calculated excluding the last date because of the use of the words "prior to" and the TPO has to pass order before the 60th day. In the present case, the word

"before" used before "60 days" would indicate that an order has to be passed before 1/11/2019 i.e on or before 31.10.2019 as rightly held by the Learned Judge.

30. Even considering for the purpose of alternate interpretation, the scope of Section 9 of the General Clauses Act, it is to be noted that an inverted calculation of the period of limitation takes place here. If the last date is taken to be the first date from which the period of 60 days is to be calculated, reading down the provision with the use of the word "from", which denotes the starting point or period of direction in general parlance, would mean that 60 days "from the last date". Even going by Section 9 of the General Clauses Act, when the word "from" is used, then, that date is to be excluded, implying here that 31.12.2019 must be excluded. After excluding 31.12.2019, if the period of 60 days is calculated, the 60th day would fall on 01.11.2019 and the TPO must have passed the order on or before 31.10.2019 as orders are to be passed before the 60th day. Therefore, either way the contention of the Revenue is a fallacy and has no legs to stand.

31. The next contention that has been raised by the learned senior standing counsel for the appellants is that the usage of the word "may" in Section 92CA (3A) indicates that the time fixed is only directory, a guideline, not mandatory and is for the sake of internal proceedings.

32. Let us now examine the relevant procedures relating to Transfer Pricing. After an international transaction is noticed subject to satisfaction of section 92B, a reference is made to the TPO under sub-Section (1) of Section 92CA of the Act. The TPO after considering the documents submitted by the assessee is to pass an order under Section 92CA (3) of the Act. As per Section 92CA (3A), the order has to be passed before the expiry of 60 days prior to the date on which the period of limitation under Section 153 expires. As per 92CA(4), the assessing officer has to pass an order in conformity with the order of the TPO. After receipt of the order from the TPO determining ALP, the assessing officer is to forward a draft assessment order to the assessee, who has an option either to file his acceptance of the variation of the assessment or file his objection to any such variation with the Dispute Resolution Panel and also the Assessing Officer. Sub-Section (5) of Section 144C of the Act provides that if any objections are raised by the assessee before the Dispute Resolution Panel, the Panel is empowered to issue such direction as it thinks fit for the guidance of the Assessing Officer after considering various details provided in Clauses (A) to (G) thereof. Sub-Section (13) of Section 144C of the Act provides that upon receipt of directions issued under sub-section (5) of Section 144C of the Act, the Assessing Officer shall in conformity with the directions complete the assessment proceedings. It goes without saying that if no objections are filed by the Assessee

either before the DRP or the assessing officer to the determination by the TPO, section 92CA(4) would come into operation. Therefore, it is very clear that once a reference is made, it would have an impact on the assessment unless a decision on merits is taken by DRP rejecting or varying the determination by the TPO.

33. It would only be apropos to note that as per proviso to Section 92CA (3A), if the time limit for the TPO to pass an order is less than 60 days, then the remaining period shall be extended to 60 days. This implies that not only is the time frame mandatory, but also that the TPO has to pass an order within 60 days.

34. Further, the extension in the proviso referred above, also automatically extends the period of assessment to 60 days as per the second proviso to Section 153.

35. Also, but for the reference to the TPO, the time limit for completing the assessment would only be 21 months from the end of the assessment year. It is only if a reference is pending, the department gets another 12 months. Once reference is made and after availing the benefit of the extended period to pass orders, the department cannot claim that the time limits are not mandatory. Hence, the contention raised in this regard is rejected.

36. As rightly pointed out by Mr.Ajay Vohra, learned senior counsel for the respondents in WA.Nos.1148 and 1149/2021, the word "may" has to be sometimes read as "shall" and vice versa depending upon the context in which it is used, the consequences of the performance or failure on the overall scheme and object of the provisions would have to be considered while determining whether it is mandatory or directory.

37. At this juncture, it is noteworthy to mention the commentary of Justice G.P.Singh on the interpretation of statutes, Principles of Statutory Interpretation (1st Edn., Lexis Nexis 2015), which is quoted below for ready reference:

> *"The intention of the legislature thus assimilates two aspects: In one aspect it carries the concept of "meaning" i.e. what the words mean and in another aspect, it conveys the concept of "purpose and object" or the "reason and spirit" pervading through the statute. The process of construction, therefore, combines both literal and purposive approaches. In other words the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. This formulation later received the approval of the Supreme Court and was called the "cardinal principle of construction".*

38. In case of assessments involving transfer pricing, fixing of time limits at various stages sets forth that the object of the provisions is to facilitate faster assessment involving such determination. In the present case, as rightly held by the learned Judge in paragraphs 22 to 29 of the order dated 07.09.2020, the order of the TPO or the failure to pass an order before 60 days will have an impact in the order to be passed by the Assessing Officer, for which an outer time limit has been prescribed under Sections 144C and 153 and is hence mandatory. What is also not to be forgotten, considering the scheme of the Act, the inter-relatability and inter-dependency of the provisions to conclude the assessment, is the consequence or the effect that follows, if an order is not passed in time. When an order is passed in time, the procedures under 144C and 92CA(4) are to be followed. When the determination is not in time, it cannot be relied upon by the assessing officer while concluding the assessment proceedings.

39. Upon consideration of the judgments and the scheme of the Act, we are of the opinion that the word "may" used therein has to be construed as "shall" and the time period fixed therein has to be scrupulously followed. The word "may" is used there to imply that an order can be passed any day before 60 days and it is not that the order must be made on the day before the 60th day. The impact of the proviso to the sub-section clarifies the mandatory nature of the time schedule. The word "may" cannot be interpreted to say that the legislature never wanted

the authority to pass an order within 60 days and it gave a discretion. Therefore, the learned Judge rightly held the orders impugned in the writ petitions as barred by limitation, as the Board, in the Central Action Plan, has specified 31.10.2019 as the date on which orders are to be passed by the TPO, reiterating the time limit to be mandatory.

28. Now if we compare the case of Pfizer Healthcare India Pvt. Ltd. and assessee on the relevant dates then following picture emerges:-

Sr. No.	***Particulars***	***Relevant Dates***	
		Pfizer Healthcare India Pvt. Ltd. (Madras High Court)	***Appellant***
A	*Assessment Year*	*2016-17*	*2012-13*
B	*Period of limitation for making an order of assessment as per Section 153 of the Act*	*21 months from the end of Assessment Year*	*24 months from the end of Assessment Year*
C	*Extension of period of limitation in case reference is made under section 92CA of the Act*	*12 months*	*12 months*
D	*Proceeding for assessment should be completed on / before this date*	*31.12.2019*	*31.3.2016*
E	*A date prior to the date on which period of limitation expires*	*30.12.2019*	*30.3.2016*
F	*Sixty day period expires on*	*01.11.2019*	*31.1.2016*

G	*Transfer Pricing Officer's order to be passed any time on / before this date*	*31.10.2019*	*30.1.2016*
H	*Date on which Transfer Pricing Officer's order is passed*	*01.11.2019*	*31.01.2016*
	Note 1. Calculation of break-up of sixty days.	***December: 30 days*** *(excluding 31.12.2019)* ***November: 30 days***	***March: 30 days*** *(excluding 31.03.2016)* ***February: 29 days*** ***January: 1 day***

29. Thus, if we follow the principle and ratio laid down by the Hon'ble Madras High Court, then the time limit for passing the TPO order in the case of assessee would expire on mid-night of 30th January 2016 i.e. (00:00 Hrs of 30th January 2016). Here in this case, the order of TPO has been passed on 31st January 2016 and accordingly, the TPO order is clearly barred by limitation by one day by virtue of time limit provided under section 92CA(3). The TPO order admittedly has been passed after the limitation has expired and consequently, the same has to be treated as bad in law and is hereby quashed. Thus, in such a situation it has to be reckoned, as if there is no TPO order and consequently, the entire transfer pricing adjustment

proposed by the TPO on the international transaction becomes *non-est* and liable to be quashed.

30. Now another issue which crops up, is, whether, once the TPO order is held to be nullity or quashed on the ground of being barred by limitation, then could AO have passed the draft order treating it to be as 'eligible assessee'. Section 144C was brought on the statute as special scheme of assessment and to provide alternative dispute resolution scheme to certain categories of 'eligible assessee'. Section 144C provides that the AO has to pass and forward a draft assessment order in the case of 'eligible assessee' if he proposes to make any variation which is prejudicial to the interest of such assessee, Sub-section 15 has defined 'eligible assessee' for the purpose of section 144C. The relevant provisions of section 144C(1) and sub section 15 reads as under:-

> ***144C.*** *(1) The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order)* ***to the eligible assessee*** *if he proposes to make, on or after the 1st day of October, 2009, any variation which is prejudicial to the interest of such assessee.*

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(15) For the purposes of this section,—
(a) "Dispute Resolution Panel" means…
(b) "eligible assessee" ***means****,—*

(i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the ***order of the Transfer Pricing Officer*** *passed under sub-section (3) of section 92CA; and*
(ii) any non-resident not being a company, or any foreign company."

31. The aforesaid section envisages that, AO in the first instance has to forward a draft of the proposed order of assessment to the "**eligible assessee**", if he proposes to make any variation which is prejudicial to the interest of such assessee. The draft assessment order is to be forwarded to an "eligible assessee", which means that, for this section to apply a person has to be an "eligible assessee" Here, the draft assessment order is to be forwarded **only to an "eligible assessee" and not to every assessee under the Act**.

32. Thus, under the aforesaid provision, the expression "eligible assessee" is followed by an expression "**means**" and there are two categories referred therein (i) any person in whose case the

variation arises as a consequence of TPO's order and (ii) any NR or Foreign company. The use of the word "means" indicates that the definition "eligible assessee" for the purposes of Section 144C(15)(b) is a hard and fast definition and can only be applicable in the above two categories. Ostensibly, the expression 'eligible assessee' has a restrictive meaning as it covers only the two types of persons mentioned above.

33. Further, considering the express language employed in defining the term 'eligible assessee' under section 144C(15)(b) and section 144C(1) in forwarding a draft assessment order to such an 'eligible assessee' only, is plain, clean and unambiguous; the said statute must be interpreted strictly without there being any role of 'equity or intendment' in such interpretation.

34. In the present case, the assessee is an Indian company and, thus, a resident in India under section 6 of the Act. Thus, the second condition under section 144C (15)(b)(ii) of the Act for qualifying as an 'eligible assessee' is not applicable. As regards the first condition under section 144C(15)(b)(i) of the Act, the same applies where there is a transfer pricing variation arising

as a consequence of the order of the Ld. TPO under section 92CA(3) of the Act. In the instant case, it will be apparent that there is no transfer pricing variation arising as a consequence of the order of the Ld. TPO once the said transfer pricing order is held to be time-barred, *non-est* and *void-ab-inito* from the very date of its existence and inception. The entire premise to adopt the special procedure under section 144C of the Act and treat the appellant an 'eligible assessee' rests on the fact that the order passed under section 92CA(3) of the Act has resulted in transfer pricing variations prejudicial to the interest of the appellant. However, once the transfer pricing order under section 92CA(3) of the Act, *per-se,* becomes a nullity, there remains no transfer pricing variation arising/ resulting or remaining as a consequence thereto. The effect of passing a null and void transfer pricing order here is that it has to be considered as *non-est*, meaning thereby, that it entails all the consequences of not having been passed at all and is ignored for all practical purposes. Thus, in absence of any transfer pricing order being passed at all and any variations arising there from, the entailing consequence in instant case is that the

appellant cannot be said to be an 'eligible assessee' under section 144C(15)(b)(ii) of the Act.

35. Accordingly, once the assessee becomes an 'ineligible assessee', the very foundation for proceeding to pass the draft assessment order does not survive, meaning thereby, that the draft assessment order passed in the instant case becomes legally invalid and hence, all consequential proceedings on the basis of the said order fail. In the instant case, a reference was made by the Ld. AO to the Ld. TPO as per the provisions of section 92CA(1) of the Act and accordingly the timelines prescribed u/s 153 of the Act remain extended by a year in view of the 3rd proviso of section 153 of the Act. Accordingly, the time limit to complete assessment proceedings u/s 143(3) of the Act in the instant case expired on **31 March 2016**. As on the date of passing **draft assessment order** u/s 144C(1) of the Act i.e. on **29 March 2016**, the Ld. AO had already received the order passed by the Ld. TPO dated **31 January 2016**, which as discussed above, is time barred, illegal and *void ab initio*, thereby making the Appellant **not an eligible assessee** u/s

144C(15) of the Act. In view of the same, the Ld. AO was ostensibly required to pass the final assessment order u/s 143(3) of the Act on that day. Having said that, the draft assessment order passed by the Ld. AO under the provisions of law is also illegal and *void ab initio* which deserves to be quashed.

36. It is a well-settled proposition now that a draft order passed in case of an 'ineligible assessee' vitiates the entire exercise of assessment and all subsequent proceedings are liable to be quashed has been held in the following cases:

(i) Honda Cars India Ltd. v. Dy. CIT [2016] 67 taxmann.com 29/240 Taxman 707/382 ITR 88 (Delhi);

(ii) Pankaj Extrusion Ltd. v. Asstt. CIT [2011] 10 taxmann.com17/198 Taxman 6 (Guj.)

(iii) FedEx Express Transportation and Supply Chain Services (India) (P.) Ltd. v. DCIT [2019] 108 taxmann.com 542 (Mumbai - Trib.)

In case of FedEx Express, the relevant portion of which has been reproduced in the foregoing paras, wherein the Tribunal has expressed the provision and finally deleted the corporate

grounds also. We accordingly follow the same reasoning here in this case also.

37. Similarly, in a reverse case scenario, i.e., where a draft assessment order was required to be passed on an 'eligible assessee' as per section 144C(1) of the Act but the same was not so passed, in the following decisions as well, the entire assessment proceedings have been held to be invalid and liable to be quashed:

(i) **Vijay Television (P.) Ltd. v. DRP [2014] 46 taxmann.com 100/225 Taxman 35/369 ITR 113 (Madras)** *affirmed by the Division Bench of the Hon'ble Madras HC in [2018] 95 taxmann.com 101 (Madras);*

(ii) **International Air Transport Association v. Dy. CIT [2016] 68 taxmann.com 246 (Bombay);**

(iii) **Zuari Cements Ltd. v. ACIT [Writ Petition No. 5557 of 2012, dated 21-2- 2013] (Andhra Pradesh)-** *Revenue's SLP dismissed by the Hon'ble Apex Court in CC No. 16694/2013 on 27th September 2013*

38. What culminates from the aforesaid two sets of parallel decisions is that the provisions of section 144C of the Act are specific and provides for a special code which must be strictly followed since it impacts the rights of an assessee substantively, i.e., the ability to accept or object a draft order

proposition, file objections before the Dispute Resolution Panel and ensure a speedy disposal thereof. Any lapse in treating an assessee as 'eligible assessee' where it is otherwise not one and vice-versa results in fatality, since it becomes a jurisdictional defect and goes on to the roots in deciding the validity of the entire assessment proceedings against the revenue. In this context, on the issue of passing a correct assessment order in first instance (either a draft or a final one), the findings of the **Hon'ble Madras High Court** in case of **ACIT v. Vijay Television (P.) Ltd [2018] 95 taxmann.com 101 (Madras)** are extremely critical which reads as follows:

> *"47. The necessity for the Parliament to incorporate Section 144-C is not only to safeguard the Revenue, but also the assessee and* ***any mistake committed by any one of them, the said party is supposed to face the consequences and cannot put the hands of the clock back and start afresh****."*

39. Further, in case of **Zuari Cements Ltd. v. ACIT [Writ Petition No. 5557 of 2012, dated 21-2-2013] (Andhra Pradesh),** the Division Bench (DB) of the Andhra Pradesh High Court categorically held that the failure to pass a draft assessment order under Section 144C (1) of the Act would **result in**

rendering the final assessment order "**without jurisdiction, null and void and unenforceable**." In that case, the consequent demand notice was also set aside. The decision of the Andhra Pradesh High Court was **affirmed by the Supreme Court** by the dismissal of the Revenue's SLP (C) [CC No. 16694/2013] on 27th September, 2013.

40. The various judgments which have been cited before us that 144C(1) will not apply and there is no variation in the return of income which cannot be disputed. Thus in our view, Ld. AO to acquire a legal and valid jurisdiction for the purpose of forwarding a draft assessment order at the first instance under section 144C(1) of the Act, it is necessary that the **assessee must be an 'eligible assessee'** within the restrictive and strict four corners of how the said expression has been defined under section 144C(15)(b) of the Act. Here, once it is held that there is no legal or valid transfer pricing order under section 92CA(3) of the Act, there remains no variation arising as a consequence thereto and the case of the assessee, being an Indian company, falls outside the definition of 'eligible assessee' as

defined under section 144C(15)(b) of the Act. Thus, the Ld. AO cannot be said to acquire a 'legal or a valid' jurisdiction under section 144C(1) r.w.s. 144C(15)(b) of the Act to pass or forward a draft assessment order to the appellant who is otherwise an 'ineligible assessee'. The action of the Ld. AO in passing the impugned draft assessment order in instant case results in non-compliance of section 144C of the Act which vitiates the entire assessment exercise.

41. The issue being fairly settled and the intent of legislature in strictly interpreting the provision of section 144C of the Act being repeatedly held so, the act of the Ld. AO in proceeding to pass a draft assessment order on the basis of an order by the Ld. TPO which is barred by limitation and thus bad in law/ non-est, results in an incurable illegality which is liable to be held as null and void, and thus, consequentially holding the final assessment order to be bad in law as well.

42. Thus, despite the fact that the reference made to the Ld. TPO is valid, in absence of a legally valid transfer pricing order and a valid draft assessment order, the Ld. AO cannot assume

jurisdiction to proceed with the assessment under Section 144C of the Act and pass the consequential final assessment order. The decisions of the Hon'ble jurisdictional High Court in case of International Air Transport Association (supra) and Dimension Data Asia Pacific PTE Ltd. (supra) forties appellant's contentions and the irresistible conclusion that the draft assessment order imbibes a jurisdictional power in terms of Sec. 144C(1) of the Act and creates/ envisages special rights upon the 'eligible assessee'. If such an order is passed on an assessee who is not an 'eligible assessee' as defined in section 144C(15)(b)(i) of the Act, then it would render the entire proceedings pursuant to such order null and void.

43. We find that section 153(1) of the Act, as it stood applicable for the AY 2012-13, provided a time limit of 3 **years** from the end of AY 2012-13 for completion of assessment under section 143(3) of the Act, i.e., on or before **31 March 2016.**

44. In such a case if the Ld. AO invokes the provisions of section 144C of the Act and passes the final assessment order after **31 January 2016** i.e. beyond the period of limitation as stated

above, such final assessment order u/s 143(3) r.w.s 144C of the Act is liable to be quashed as being barred by limitation.

45. In a recent decision of the **Hon'ble Madras High Court** in case of **Virtusa Consulting Services Put. Ltd [TS-474-HC-2022(MAD)] dated 9 June 2022,** it has been held in context of period of limitation under section 153 of the Act as under:

"17. Further, it is to be noted that the different timelines to be adhered by the TPO, Assessing Officer to pass a draft order, assessee to file their objections, DRP to issue directions and the assessing officer to pass final order, would commence only on a reference to the TPO and not otherwise. At ***this juncture, it is not to be forgotten that the period of 33 months is to pass the final order of assessment after the directions from the DRP.*** *In this case, we find from the undisputed dates and events that not only was the reference to the TPO made after the period of expiry of the period of limitation to pass assessment orders, but also that* ***the assessing officer has failed to pass final assessment orders in time.*** *The time to pass the original assessment would end on 31.12.2008 being 21 months from the end of the assessment year 2006-07 i.e., 31.03.2007. Then the last date for the assessing officer to pass the final assessment order would end on 31.12.2009, even considering the extension by twelve months. In the present*

case, the order of the DRP itself is only 24.09.2010 much beyond the permissible period."

46. Thus taking into the provisions of law and the judgment referred to above, we hold that the final assessment order passed on 31 January 2017 is beyond the prescribed period of limitation under section 153 of the Act expiring on 31 March 2016, thus, barred by limitation and is hereby quashed.

47. In the result, the appeal filed by the assessee stands **allowed on the additional grounds**.

Orders pronounced in the open court on 23rd February, 2023.

Sd/-	*Sd/-*
(G. S. Pannu)	**(Amit Shukla)**
President	Judicial Member

मुंबई Mumbai;दिनांक Dated : 23/02/2023

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

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उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई**/ ITAT, Mumbai**